

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Wisconsin Energy Corporation for
Approval to Acquire the Outstanding Common Stock of
Integrus Energy Group, Inc.

Docket No. 9400-YO-100

REPLY BRIEF OF JOBS4WI, INC.

**I. THE APPLICANT FAILS TO MEET THE STATUTORY
THRESHOLD OF UTILITY CUSTOMER “BEST INTERESTS.”**

The Applicant owns state franchised monopoly public utilities. The customers of these utilities have no choice but to rely upon these utilities for service and to rely upon the Commission to regulate the Applicant in a manner that assures reasonably priced and adequate service. This is not true in some states where competitors or other facilities of Wisconsin manufacturers operate. In a number of jurisdictions, industrial accounts can bypass their local utility distribution company and have direct access to power markets to purchase power at competitive wholesale market prices. Thus, in other states industrial electric customers are less dependent upon their state utility commission to assure competitive pricing.

The result of this case could materially change the landscape of Wisconsin’s utility operations and regulation for decades into the future. If the transaction is approved, a low cost electric service provider will be eliminated as an independent business and instead, will be subject to operational control by a larger and higher cost utility operator. (Brief-Jobs4WI-6)

Jobs4WI and the other intervenors have presented clear evidence that the transaction, as proposed by the Applicant, does not meet the statutory threshold of being in the best interests of utility customers, investors or the public. Jobs4WI is not asking for immediate benefits or instant

benefits, rather a showing of certain benefits that have a material likelihood of accruing to utility customers. Speculative benefits at some undefined future date, as offered by the Applicant, cannot constitute substantial evidence which can support a finding by the Commission of best interests, as required by statute.

But the record does demonstrate the transaction will create real detrimental risks for the public (Brief-Jobs4WI-19) and real rate increase risks for customers that currently do not exist. (Brief-Jobs4WI-11 to 15) As such, the Commission must reject the Application.

WEC suggests in their brief that customers will likely see lower rates because increased scale will lead to better purchasing power, access to lower cost credit and an increase in best practice applications, among other assertions. (WEC-Brief-7) But they present no evidence other than Ipso facto arguments stating the conclusion that scale will be beneficial --- an ironic argument to make for the utility with by far the largest scale in the state with average industrial power prices more than 34% higher than the much smaller WPS (Brief-Jobs4WI-6). The Applicant's own operating history does not indicate that WEC management can use scale to produce cost savings (Brief-Jobs4WI-11-12) and no evidence is presented to explain how or when any such savings will actually be achieved or customer rates will actually be lower.

WEC, throughout their brief, continually stonewalls the customer best interests discussion. They suggest many ways to avoid harming customers, but avoid discussing what is obviously the statutory best interests standard... how are the customers, investors and public better off after the transaction then they would be if the status quo is maintained and the transaction doesn't occur? Other than empty statements about uncertain benefits primarily resulting from increased scale (a conclusory assertion that is contradicted by WEC's largest scale

coupled to their high cost provider status), there is no case made for how these stakeholders are actually better off than they would be if the transaction did not occur.

In acknowledgment of the risk of future rate increases imposed on customers by the transaction, WEC has agreed to a labyrinth of conditions that may offer some customer protection from higher rates in the future. (WEC-Brief-8, 9) But, have they covered all potential downsides? Certainly not. The customers bear the risk of all unforeseen circumstances.

The argument of avoiding detriments in the future is but a mirror image of assuring benefits in the future. If only some downsides are avoided and no benefits are provided then surely, the best interests standard can only be met if the transaction does not occur. The Applicant proposes using a wide range of conditions in an attempt to address a variety of risks that may cause stakeholders to be worse off in the future. But this argument fails to establish that stakeholders will be better off in the future with the transaction ... i.e. that the stakeholders' best interests are served by allowing the transaction to proceed.

This case involves two possible outcomes and the state statute requires this Commission to determine which circumstance (whether the merger occurs, or it doesn't) serves the best interests of customers, investors and the public. The Applicant has failed in its testimony and in its brief to produce substantial evidence that the stakeholders' best interests will be served by the acquisition going forward. And, the Applicant apparently objects to the Commission establishing conditions which would assure benefits so the Commission can make a "best interests" finding following a comparison of stakeholder circumstances with, and without, the transaction. (Brief-WEC-2) As such, the Commission is obligated to reject the Application as proposed by the Applicant.

II. THE COMMISSION CAN APPROVE THE TRANSACTION WITH CONDITIONS THAT ASSURE THE TRANSACTION IS IN THE BEST INTEREST OF THE STAKEHOLDERS.

The Applicant's proposed acquisition is not a transaction which is presumptively approved by the Commission. The Commission can only approve the acquisition if it finds substantial evidence in the record that supports the reasonable conclusion that the transaction is in the best interests of utility customers, investors and the public. The Application fails to meet this standard; therefore, the Commission should deny the Application; and then it could choose in the alternative to precondition an approval on specific conditions that will assure that the best interests standard required by statute is met.

The Commission has no obligation or duty to restructure the application on behalf of the Applicant, however, the Commission may choose to do so. Jobs4WI continues to assert that the conditions it proposed in its Initial Brief are among the conditions needed for the Commission to find that the Transaction is in the best interest of the stakeholders. The Applicant's main challenge to these conditions is the claim that these conditions are beyond the Commission's authority (WEC-Brief-24, 28) or otherwise would be considered retroactive ratemaking. (WEC-Brief-13, 16) These arguments fail to address the broad discretion of the Commission to deny an application as proposed and then provisionally approve it, subject to the applicant accepting conditions necessary to remedy the shortcomings in the application that prompted denial.

To meet the statutory requirement of a best interests finding, conditions are needed in this proceeding to make up for a deficiency in the record and to provide a basis for approval that the record does not otherwise provide. To assure the necessary statutory best interests standard is realized, the Commission may add conditions to the transaction which could not be imposed in other environments, say... a rate case.

And if the Commission's conditions are not acceptable to the Applicant, the Applicant can choose not to proceed with the transaction.

III. THE APPLICANT'S PROPOSED ATC OWNERSHIP IS A CONFLICT OF INTEREST.

The ATC issue is not about governance as the Applicant would like to discuss (WEC-Brief-28) but rather about the inherent conflict of interest from a public policy standpoint. WEC's retail jurisdictions are some of the largest customers of ATC and WEC will receive 60% of the profits of ATC. Customer payments pass through WEC's retail operations to ATC, where a majority of the profit would then go to WEC. Does this situation cause WEC to have the same concerns about the costs of ATC transmission service as do its retail customers? Undoubtedly not.

Retail utility customers deserve vigilant advocacy by WEC controlled utilities in all ATC proceedings to assure the lowest service costs for adequate transmission service. WEC is compromised by being on both sides of the transmission table as customer and as owner. This conflict is evident in the Applicant's brief (Brief-WEC-11-12) where the Applicant defends both WEPCO's transmission revenue and ATC's construction projects in the same paragraph. This conflict of interest should not be allowed to continue.

Approval of the transaction should be conditioned upon the Applicant divesting its interest in the ATC. This would not compromise the value of the Applicant's ownership interest because: (1) the divestiture could result in a lucrative market value price for ATC; (Direct-PSC-Hubert-24, L1-17) and (2) the spin-off of ATC as an independent company was apparently allowed as part of the original long range plan when the "independent" transmission utility was formed. (Direct-PSC-Hubert-26, L7-16)

IV. THE COMMISSION SHOULD PROVIDE WHOLESALE POWER PRICING TO WISCONSIN'S LARGEST INDUSTRIAL CUSTOMERS TO ENSURE THE TRANSACTION IS IN THEIR BEST INTERESTS.

The Applicant dismisses the Jobs4WI position that high voltage electric customers who are directly connected to the ATC transmission system should be offered a new tariff that will provide lower industrial energy costs in Wisconsin. It is ironic, however, that the Applicant's own brief included references to New Page (Brief-WEC-6), which enjoys low cost wholesale power through its wholly owned utility. A unique situation, no doubt, but it provides some of New Page's mills with competitively-priced power. Jobs4WI is seeking the same pricing for all directly connected high voltage customers in the Applicant's service territory where the electric service characteristics are physically similar to New Page's mills.

Additionally, as part of its effort to get the transaction approved in Michigan, the Applicant has offered one of Michigan's largest industries a substantial discount on power pricing, (Jobs4WI-Brief-21) yet Wisconsin's largest industries have been offered no such deal. According to the Applicant, Wisconsin large power customers are left to wait and wonder about future price increases while Michigan customers enjoy lower power costs through special tariff deals. The Commission should require a similar benefit for Wisconsin's large manufacturers by following the New Page example and giving the largest industrial customers access to wholesale power pricing.

V. THE APPLICANT'S JOB LOSS CLAIMS SHOULD BE DISREGARDED.

The Applicant notes in a footnote to its brief that the Jobs4WI proposal of requiring the Applicant to reduce O&M spending by 5% in the next rate case as a tangible benefit from the

transaction is somehow “draconian” in nature in that it would allegedly cost the Applicant’s utility subsidiaries 1,000 jobs in the first year. (Brief-WEC-12) But, this statement is not supported by the Applicant’s own testimony.

Mr. Reed contradicts his own jobs claim.

Q: *Is it your testimony that any immediate rate savings that the Commission might require would absolutely require layoffs?*

A: *I can't make that statement unequivocally.*

(Reed – Technical Session Transcript, P141, L10-14)

Q: *But you would agree that whether or not to implement layoffs, whatever the income or the revenue of a utility is, is ultimately a management decision?*

A: *It is, yes.*

(Reed – Technical Session Transcript, P140, L10-14)

Mr. Lauber also contradicts Mr. Reed’s jobs claim.

Q: *And is there some likelihood that the way in which WEC will see the 3 to 5 percent synergy savings, which Mr. Reed doesn't believe will actually appear between -- until between five and ten years, is related pretty clearly to reduction in workforce?*

A: *Not necessarily over the three to five years. It could be a variety of items.*

Q: *Between the five and ten --*

A: *I mean the five to ten years.*

Q: *But that would be a component of it?*

A: *It would be a component, but not necessarily everything.*

EXAMINER NEWMARK: *Would it be a majority of the savings?*

THE WITNESS: *I would have to -- we'd have to look at what the future transition cost and things could be -- what it could be. It could be from a variety of items.*

(Lauber, Technical Session Transcript, P171, L 16-25 & P172, L1-8)

The Applicant has not completed a synergies study so it has no idea if jobs would be lost in any cost reduction effort. Jobs4WI points out that Wisconsin currently has high industrial electric rates and any additional increase could cost Wisconsin thousands of lost manufacturing jobs. (Brief-Jobs4WI-7)

VI. CONCLUSION

For the foregoing reasons, the Commission should deny the Applicant's request to approve the transaction unless the Commission imposes and the Applicant agrees to accept the conditions proposed by Jobs4WI in the record.

Respectfully submitted this 6th day of April 2015.

_____/s/____

Daniel J. Eastman,
Executive Director
Jobs4WI, Inc.

_____/s/____

Steven J. Vock
Technical Director
Jobs4WI, Inc.